

Honorable Melvin Price, Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our comments on H.R. 12006, a bill which would amend the National Security Act of 1947 to provide criminal sanctions for unauthorized disclosure of information relating to intelligence sources and methods. The President proposed this legislation in his message of 18 February. It was initiated several years ago by this Agency and has been extensively reviewed within the Executive branch. We strongly urge that your Committee favorably consider this measure.

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases, the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a special relationship of trust with the United States Government. Current law, in our opinion, does not adequately cover situations where a deliberate breach of this relationship of trust occurs. In most instances, the Government must prove an intent to harm the United States or aid a foreign power. The evidence required to establish this element of the offense may require the revelation of additional sensitive information in open court or, at the very least, the further dissemination and confirmation of the information which is the subject of the prosecution. The Government is usually unwilling to incur the additional damage which would result from such further disclosures, and as a result, the deterrent aspect of existing legislation is undermined significantly.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to protect intelligence sources and methods. However, no legal sanctions are provided for him to implement this responsibility. The legislation proposed in this bill would close this gap to the limited degree necessary to carry out a foreign intelligence program, but at the same time give full recognition to our American standards of freedom of information and protection of individual rights.



The proposed legislation recognizes the authority of the Director of Central Intelligence, and the heads of other agencies expressly authorized by law or by the President to engage in foreign intelligence activities for the United States, to designate certain information as relating to intelligence sources and methods and provides a criminal penalty for the disclosure of such information to unauthorized persons.

The proposed legislation is limited to individuals entrusted with the sensitive information described in the legislation or who gain access to it by virtue of their position as officer, employee, contractor, or other special relationship within the United States Government.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably classified and designated, the legislation provides that it is a bar to prosecution if prior to the return of the indictment or the filing of the information the Attorney General and the Director of Central Intelligence do not certify that the information was lawfully classified and lawfully designated. This determination is subject to in camera review by the courts. Additionally, it is a bar to prosecution if: (a) there did not exist a procedure whereby the defendant could have had the information reviewed for possible declassification; (b) the information had been placed in the public domain by the Government; and (c) the information was not lawfully classified and not lawfully designated at the time of the offense. It is also a defense if the information was provided to any committee of Congress pursuant to lawful demand. The legislation also provides for injunctive relief in those instances where any person is about to engage in any acts or practices which would constitute a violation of the new subsection.

This Agency and the Department of Justice are presently discussing certain possible minor refinements in the proposed bill. I feel strongly that this legislation is necessary to ensure the continued effective performance of our intelligence agencies. While we will not oppose minor changes to perfect language or effect technical improvements, we do not believe the bill should be modified in a manner that could change substantively what we feel are its essential features.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George Bush
Director

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